

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:14CR98-2
(Judge Keeley)

TIMOTHY CAVENDER,

Defendant.

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S
OPINION/REPORT RECOMMENDATION CONCERNING PLEA OF
GUILTY IN FELONY CASE AND SCHEDULING SENTENCING HEARING

On May 18, 2015, the defendant, Timothy Cavender ("Cavender"), appeared before United States Magistrate Judge John S. Kaull and moved for permission to enter a plea of GUILTY to Count Four of the Second Superseding Indictment. Cavender stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Cavender's statements during the plea hearing and the testimony of West Virginia State Police Officer John Wayne Smith, the magistrate judge found that Cavender was competent to enter a plea, that the plea was freely and voluntarily given, that

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he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On May 19, 2015, the magistrate judge entered an Opinion/Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 98) finding a factual basis for the plea and recommended that this Court accept Cavender's plea of guilty to Count Four of the Second Superseding Indictment.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. On May 20, 2015, the government, by Assistant United States Attorney Shawn A. Morgan ("Morgan"), responded to the R&R stating the government had no objection (dkt. no. 102). Cavender did not file any objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R, **ACCEPTS** Cavender's guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count Four of the Second Superseding Indictment.

Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it

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has received and reviewed the presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. The Probation Officer undertake a presentence investigation of **TIMOTHY CAVENDER**, and prepare a presentence report for the Court;

2. The Government and Cavender are to provide their versions of the offense to the probation officer by **June 17, 2015**;

3. The presentence report is to be disclosed to Cavender, defense counsel, and the United States on or before **August 3, 2015**; however, the Probation Officer is not to disclose the sentencing recommendations made pursuant to Fed. R. Crim. P. 32(e)(3);

4. Counsel may file written objections to the presentence report on or before **August 17, 2015**;

5. The Office of Probation shall submit the presentence report with addendum to the Court on or before **August 31, 2015**; and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the

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factual basis from the statements or motions, on or before
September 14, 2015.

The magistrate judge remanded Cavender to the custody of the
United States Marshal Service.

The Court will conduct the sentencing hearing for the
defendant on **Monday, September 28, 2015 at 1:30 P.M.** at the
Clarksburg, West Virginia point of holding court.

It is so **ORDERED.**

The Clerk is directed to transmit copies of this Order to
counsel of record, the defendant and all appropriate agencies.

DATED: June 3, 2015

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE